

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Laurel Francine Bland-Glass,

Debtor.

Case No. 04-69703
Chapter 13
Hon. Marci B. McIvor

**OPINION SUSTAINING IN PART TRUSTEE'S OBJECTIONS TO APPLICATION FOR
COMPENSATION AND ALLOWANCE OF PRE-CONFIRMATION ATTORNEY'S
FEES AND COSTS**

This matter is before the Court on the Trustee's Objections to Debtor's Counsel's Application for Compensation and Allowance of Pre-Confirmation Attorney's Fees and Costs. The Trustee objects to the fees sought as excessive and unreasonable. For the reasons stated in this Opinion, the Court sustains in part the Trustee's Objections and awards Counsel total fees and costs of \$ 3,319.88. Reducing the award by \$600.00, the retainer paid at the commencement of the case, Counsel is entitled to \$2,719.88.

Jurisdiction

This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

Statement of Facts

Debtor filed a voluntary Chapter 13 bankruptcy petition on October 20, 2004. An Order Confirming Plan was entered on February 10, 2005. On March 3, 2005, Debtor's Counsel filed an application seeking fees in the amount of \$3,706.50 (17.65 hours at \$210 per hour) and costs of \$148.88. On March 22, 2005, the Trustee filed objections to the fee application. The Trustee asserts that the fees sought are excessive and unreasonable

under 11 U.S.C. § 330 and that professional fees are sought for work that was ministerial or clerical in nature.

Standard for Fee Awards in Bankruptcy

A court has the duty to review all fee applications, regardless of whether an objection has been filed, in order to protect the assets of the estate for the benefit of the creditors. 11 U.S.C. § 330(a)(2); *In re Bush*, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991).

A bankruptcy court has broad discretion in determining fee awards. *Manufacturers Nat'l Bank v. Auto Specialities Mfg. Co. (In re Auto Specialities Mfg. Co.)*, 18 F.3d 358 (6th Cir. 1994).

Section 330(a)(1) of the Bankruptcy Code provides that the court may award an attorney reasonable compensation for actual, necessary services rendered. 11 U.S.C. § 330(a)(1). Section 330(a) provides, in pertinent part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services,

taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate, or;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (emphasis added).

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991).

The lodestar method requires that the court first determine a reasonable hourly rate, and

then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may “then determine whether a global reduction or enhancement of the fees is in order.” *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993). The ability to review fee applications in the context of each individual case “permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration.” *Allied Computer Repair, Inc.*, 202 B.R. at 884-85. The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

Objections to Fees

The Trustee objects to specific time entries on the application as unreasonable and excessive. (Trustee’s Objections ¶¶ 1, 3). The Court notes that Debtor’s Counsel charges \$210 per hour for her time. That hourly rate, while high, is not inherently unreasonable for an experienced and competent lawyer in the Chapter 13 context. It carries with it, however, a responsibility to be extremely efficient and careful about the time being billed to a debtor and/or her estate.

Having reviewed the entire application with specific attention to the entries to which the Trustee objects, the Court finds that the time entry for January 13, 2005 should be reduced by half. That entry, in the amount of \$1,071.00, covers travel to and attendance at a confirmation hearing (5.10 hours at \$210 per hour). Counsel asserts that the amount of time spent on that matter was required due to a dispute with the Trustee which resulted in the case being placed on the contested docket. While this is no doubt true, a Chapter 13

debtor's attorney is routinely faced with the possibility of matters being placed on the contested docket and should (whenever possible) bring other matters to work on while waiting for the contested case to being called. It is not reasonable to charge over \$1,000 for a confirmation hearing in a routine Chapter 13 case. Counsel's requested fees will therefore be reduced by \$ 535.50.

Having specifically reviewed the entire fee application and other objections thereto, the Court finds that the fees are not excessive and overrules the Trustee's Objections.

Conclusion

For the reasons stated above, the Court sustains in part the Trustee's Objections to Debtor's Counsel's Application for Compensation and Allowance of Pre-Confirmation Attorney's Fees and Costs. Counsel is awarded fees in the amount of \$3,101.00 and costs in the amount of \$148.88 for a total of \$3,319.00. Reducing the award by \$600.00, the retainer paid at the commencement of the case, Counsel is owed \$2,719.88.

/s/
Marci B. McIvor
United States Bankruptcy Judge

Dated: June 6, 2005
Detroit, Michigan

cc: Karen Evangelista
David Ruskin